

Service Date: November 12, 1993

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER Of the Submission)	UTILITY DIVISION
of Montana Power Company's)	
Integrated Electric Least Cost)	DOCKET NO. 93.3.9
Resource Plan.)	ORDER NO. 5745a

PROTECTIVE ORDER

On October 12, 1993 the Montana Power Company (MPC) filed a motion with the Montana Public Service Commission (PSC or Commission) seeking a protective order limiting access and use of information concerning production and environmental costs and the performance ability of resources bid in MPC's Request for Proposal (RFP).

Section 69-3-105(2), MCA, states: "The Commission may issue a protective order when necessary to preserve trade secrets, as defined in 30-14-402, required to carry out its regulatory function." In its motion, MPC asserts: "This bid resource information is not generally known to and not readily ascertainable by the competitors of those who have provided bid responses to MPC."

Based on MPC's assertion, the Commission considers it

appropriate to issue a Protective Order and to provide a procedure for balancing the public's right to know against MPC's bidders' right to nondisclosure of confidential trade secret information. In issuing this Protective Order, the Commission is not deciding or expressing any opinion as to whether the designated information constitutes confidential trade secrets under Montana law. In this regard, this Protective Order affords interested parties an opportunity to challenge the confidential trade secret status of the designated information.

THEREFORE, IT IS HEREBY ORDERED that the following Protective Order shall be in effect with respect to production and environmental costs and the performance ability of MPC's bid resources (hereinafter "Proprietary Information"), as provided in Docket No. 93.3.9 by MPC (hereinafter "Providing Party"):

Proprietary Information. Any information relating to production and environmental costs and the performance ability of MPC's bid resources submitted to the Commission or participants in this Docket, and that is claimed to constitute confidential trade secret material shall only be furnished pursuant to the terms of this Protective Order, and shall be treated by all persons accorded access thereto as constituting Proprietary Information and shall neither be used nor disclosed except in

accordance with the terms of this Protective Order. All material claimed to be Proprietary Information must be marked with an appropriate designation and submitted to the Commission on yellow paper so that it is easily identified for filing purposes.

Terms of Disclosure. All Proprietary Information made available pursuant to this Protective Order shall be given solely to counsel for the parties, the PSC and PSC staff, the Montana Consumer Counsel (MCC) and his staff, the Department of Natural Resources and Conservation (DNRC) and its staff, and shall not be used or disclosed except for the purposes of this docket, or as otherwise permitted by subsequent PSC order. Counsel may authorize access to confidential information by that party's experts as follows:

(a) Ten (10) days' written notice, as counted from the date of receipt of the notice, shall be given to the Providing Party.

The notice shall contain the name, title, job description, description of previous positions and experience, and area of expertise of any person to be given access to the Proprietary Information. Any such expert may be an employee of a party, provided that such employee's duties are solely dedicated to regulatory activities on behalf of the party, and such employee's duties are not related to marketing or planning of competitive

products or services.

(b) If it is the good faith position of the Providing Party that the designated person should not be given access to the information, that party must respond to the notice with a written objection. If the party proposing access does not receive a written objection by the Providing Party within ten (10) days after receipt of the written notice, its counsel shall be authorized to provide access to the designated person.

(c) If the Providing Party objects to access by the designated person, the party that requested such access and the Providing Party shall attempt to resolve the objection. If the parties are unable to resolve the objection, either of them may apply to the Commission for a ruling as to the proposed access. In that event, access to the Proprietary Information shall not be given until resolution of the objection by the Commission.

(d) The standard to be applied by the Commission in determining a question of expert access to Proprietary Information shall be whether access by the designated person would be likely to jeopardize the confidential trade secret status of the information. A party dissatisfied with a decision of the Commission may appeal to the District Court, and, pending appeal, the Proprietary Information shall not be disclosed to the designated

person.

(e) Any member of the Public Service Commission and any member of its staff, the MCC and any member of his staff, and the DNRC and its staff, may have access to any Proprietary Information made available pursuant to this Protective Order and shall be bound by its terms.

Nondisclosure Agreement. Proprietary Information shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is attached and incorporated herein as Exhibit "A." The Nondisclosure Agreement (Exhibit "A") shall require the person to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that he/she has reviewed the same and has consented to be bound by its terms. The Nondisclosure Agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the Providing Party and the Commission.

(a) Prior to a party giving its expert lawful access to Proprietary Information, counsel for that party shall deliver a copy of this Protective Order to the expert, and prior to disclosure the expert shall agree in writing to comply with its terms.

Delivery of Documentation. Where feasible, Proprietary

Information will be marked as such and delivered to appropriate counsel. In the alternative, the Proprietary Information may be made available for inspection and review by counsel, staff and experts at a time and place mutually agreed on by the parties, unless otherwise directed by the Public Service Commission.

Challenge to Confidentiality. This Protective Order establishes a procedure for the expeditious handling of information that the Providing Party claims is confidential trade secret material, but it shall not be construed as a definitive ruling on the question of confidential trade secret status. A party to this proceeding or other interested person or entity with proper standing, or the Commission on its own motion, may challenge the claim of confidential trade secret status at any time. Any motion so challenging must be served upon the Providing Party, and the Providing Party may file a response or objection within fourteen (14) days thereafter.

(a) If the confidential trade secret status of the Proprietary Information is challenged, resolution of the issue shall be made by a Hearing Examiner or the Commission after consideration of briefs and/or proceedings in camera. The record of any in camera hearing shall be marked "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 93.3.9." It shall be transcribed

only upon agreement of all participating parties or by order of the Hearing Examiner or the Commission; and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Protective Order. The Court Reporter shall also be required to sign an Exhibit "A."

(b) In the event that the Hearing Examiner or the Commission should rule that any or all of the Proprietary Information should be removed from the requirements of this Protective Order, the parties shall not disclose such information or use it in the public record for a period of ten (10) business days thereafter, so that the Providing Party shall be afforded a reasonable opportunity to seek a stay or other appropriate relief.

Seal. While in the custody of the PSC and MCC, materials subject to this order shall be marked "CONFIDENTIAL -- SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 93.3.9" and shall not be considered as records in the possession of the PSC or MCC, as contemplated by the various open meetings or public records statutes.

Use in Pleadings, Briefs, Etc. Where reference to Proprietary Information is required in pleadings, briefs, argument or motions, it shall be citation to title or exhibit, number or some other nonconfidential description. Any further use or substan-

tive reference to Proprietary Information shall be placed in a separate section of the pleading or brief and submitted to the Commission under seal. This sealed section shall be served only upon the various counsel (one copy each) who have signed an Exhibit "A." All the protections afforded in this Protective Order apply to materials prepared and distributed pursuant to this paragraph.

(a) Use in Commission Orders. The Hearing Examiner or the Commission will attempt to refer to Proprietary Information in only a general or conclusionary form, and to the greatest extent possible, will avoid reproduction of Proprietary Information in any decision or ruling. If it is necessary to discuss Proprietary Information in greater detail, it shall be placed in a separate section of the order under seal. This sealed section shall be served only on counsel (one copy each) who have signed an Exhibit "A." Counsel who have not signed an Exhibit "A" shall receive the cover sheet to the sealed portion.

Segregation Files. All Proprietary Information filed with the Commission shall be segregated in the files of the Commission and withheld from inspection by any person not bound by the terms of this Protective Order. All Proprietary Information coming into the possession of the MCC under this Protective Order may be

retained by him in his office files, but shall be similarly withheld from inspection by any person not bound by the terms of this Protective Order.

Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Proprietary Information by reason of this Protective Order shall neither use nor disclose the Proprietary Information for purposes other than the preparation and presentation of briefs and argument in this Docket; and shall take reasonable precautions to keep the Proprietary Information secure in accordance with the purpose and intent of this Protective Order.

Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend the provisions hereof as it deems appropriate.

Done and Dated this 9th day of November, 1993 by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

BOB ROWE, Vice Chairman

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

EXHIBIT "A"

I have reviewed the foregoing Protective Order in Docket No. 93.3.9, dated November 9, 1993, and agree to be bound by the terms and conditions of such order.

Signature

Typed or Printed Name

Residence Address

Employer or Firm

Business Address

Party

Date